

Before the
COPYRIGHT ROYALTY JUDGES
The Library of Congress

In re

DISTRIBUTION OF CABLE
ROYALTY FUNDS

CONSOLIDATED DOCKET NO.
14-CRB-0010-CD/SD
(2010-13)

DISTRIBUTION OF SATELLITE
ROYALTY FUNDS

SETTLING DEVOTIONAL CLAIMANTS' OPPOSITION TO MOTION
FOR SUBSTITUTION OF PARTIES BY WORLDWIDE SUBSIDY
GROUP LLC OR, ALTERNATIVELY, RYAN GALAZ

The Settling Devotional Claimants ("SDC") oppose the Motion for Substitution of Parties by Worldwide Subsidy Group LLC ("WSG") or, Alternatively, Ryan Galaz ("WSG Motion").

A. Background.

In the Judges' *Order on Order to Show Cause* (June 12, 2020), the Judges granted "WSG and/or Ryan Galaz" leave to file a motion to substitute themselves for Alfred Galaz d/b/a Multigroup Claimants, "supported by documentary evidence or legal authority that establishes that the person or entity put forward as the substitute for Alfred Galaz *has legal authority to represent the copyright owners formerly represented by Alfred Galaz.*" *Order on Order to Show Cause* (June 12, 2020), at 2 (emphasis added). WSG filed a motion to substitute itself for Alfred Galaz, but the Judges determined that WSG's motion, based solely on an unwritten intent by Ryan Galaz to convey his contractual interests in Multigroup Claimants to WSG, was insufficient to establish the authority asserted, in the absence of "documentary evidence and/or compelling legal argument (with citation to legal authority)." *Order Denying Without Prejudice*

MGC Motion for Substitution of Parties (Oct. 5, 2020), at 3. The Judges granted WSG leave to try again. *Id.* at 4.

WSG and Ryan Galaz have now filed another motion, this time supported by a “Transfer of Interests to Worldwide Subsidy Group LLC,” dated October 14, 2020 (executed, by a computer-generated signature, on the same date as the motion) purporting to transfer to WSG “any and all right, title, and interests previously held by Multigroup Claimants and Spanish Language Producers, sole proprietorships of Alfred Galaz, including but not limited to any interest as an owner or economic interest holder in such interests.” WSG Motion at Ex. A. This “Transfer of Interests” remains insufficient, because it does nothing to establish any source of “legal authority to represent the copyright owners formerly represented by Alfred Galaz.” *Order on Order to Show Cause* (June 12, 2020), at 2.

B. The Copyright Act Does Not Authorize a Distribution to a Claimant That Is Neither a Copyright Owner nor a “Designated Agent.”

The “Transfer of Interests” begs the question: What is the source of the “legal authority to represent the copyright owners” that WSG and Ryan Galaz claim?

The Copyright Act does not permit the Judges to distribute funds based on a mere contractual right. Rather, royalty fees deposited pursuant to the Copyright Act may be distributed only “to the copyright owner entitled to receive them, *or to their designated agents.*” 17 U.S.C. § 111(d)(4)(B) (emphasis added); *see also Memorandum Opinion and Order Following Preliminary Hearing on Validity of Claims*, No. 2008-2 CRB CD 2000-2003 (Phase II) (Mar. 21, 2013), at 36. Therefore, WSG and/or Ryan Galaz may not receive a distribution or participate in these proceedings unless they can establish that one of them is either a copyright owner or a “designated agent” of a copyright owner.

WSG and Ryan Galaz admit that they are not copyright owners and that they have no written instrument reflecting any transfer of copyright ownership: “[A]s the Judges have previously ruled, the assignment of a right to collect retransmission royalties is *not* an assignment of a copyright interest, and is *not* therefore subject to any requirement that such transfers be reflected in a written instrument.” WSG Motion at 5 n. 2 (citing *Ruling and Order Regarding Claims and Separate Opinion*, No. 2008-1 CRB CD 98-99 (Phase II), at 12 (June 18, 2014); *Memorandum Opinion and Ruling on Validity and Categorization of Claims*, Nos. 2012-6 CRB CD 2004-2009 (Phase II), 2012-7 CRB SD 1999-2009 (Phase II), at 36)); *see also* 17 U.S.C. § 204(a) (“A transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner’s duly authorized agent.”).

Therefore, as the Judges have held, if WSG or Ryan Galaz has any authority to represent the copyright owners in these proceedings, then it must be as a “designated agent” of copyright owners (17 U.S.C. § 111(d)(4)(B)):

While neither the Copyright Act nor the Judges’ rules governing this proceeding require that a *written* agreement be in place to authorize a designated agent to act on behalf of a claimant, the parties must manifest in some unambiguous manner that they intended for a principal/agent relationship to exist between them prior to or *as of* the date the agent filed the claim.

Memorandum Opinion and Order Following Preliminary Hearing on Validity of Claims, No. 2008-2 CRB CD 2000-2003 (Phase II) (Mar. 21, 2013), at 36 (emphasis in original).

For years, both the SDC and the Judges have understood the purported predecessors of Ryan Galaz to be acting as agents. The Judges have repeatedly so held, and have explicitly allowed Ryan Galaz’s purported predecessors to participate in these proceedings on the basis of their asserted status as agents of the copyright owners:

[T]he Judges find that IPG has not established itself as an assignee of rights that would justify distribution of royalties to IPG for its own account. Therefore, the Judges assess IPG's role in the claim filing process as one of agent for the respective claimants.

Memorandum Opinion and Order Following Preliminary Hearing on Validity of Claims, No. 2008-2 CRB CD 2000-2003 (Phase II) (Mar. 21, 2013), at 2.

The agency versus assignee question has arisen in other proceedings involving IPG. ... IPG has maintained steadfastly that it is a "copyright owner" in these proceedings, by virtue of an assignment from its clients. The Judges disagree that the assignment of a right to collect money is an assignment of a copyright interest, and view IPG as a "designated agent."

Ruling and Order Regarding Claims and Separate Opinion, No. 2008-1 CRB CD 98-99 (Phase II), at 12.

IPG is a commercial enterprise performing a service for rights holders. ...

For IPG to act in the capacity of agent for the principal rights holders, IPG must have representation authority from each rights holder that IPG purports to represent.

Memorandum Opinion and Ruling on Validity and Categorization of Claims (Mar. 13, 2015), at 6.

In this proceeding, IPG purports to have assigned not the copyrights but rather its *agency rights* to MGC. ... "[T]he words 'representative' and 'agent' are synonyms."

Ruling and Order Regarding Objections to Cable and Satellite Claims, Nos. 14-CRB-0010-CD (2010-13), 14-CRB-0011-SD (2010-13) (Oct. 23, 2017), at 12-13 (quoting *All Party*

Parliamentary Group on Extraordinary Rendition v. U.S. Dept. of Defense, 754 F.3d 1047, 1051 (D.C. Cir. 2014)); *see also id.* at 13 n. 29 ("The Judges have found that such IPG/Claimant Representation Agreements constitute agency agreements (rather than assignments of copyrights)."); *id.* at 43 ("Authorized representatives of copyright owners are agents.").

Ryan Galaz's purported predecessors themselves have embraced their alleged status as agents, when it suits their purposes to do so:

The Judges take note of IPG's suggestion that "if IPG, as an agent of copyright owners, contracted with another entity to act as IPG's agent in these proceedings, and simply represented in its contract that 'IPG is the duly authorized representative of all joint claims submitted by IPG, and that IPG is authorized by all joint claimants to execute the Representation Agreement on their behalf,' then no further scrutiny of IPG's contractual or program claims could occur." IPG WRS to MPAA Claims, at 9 n. 8. Given the circumstances that have led to IPG's loss of the 'presumption of validity,' such a transparent subterfuge could well constitute fresh and sufficient evidence to cast doubt on IPG's representation, underscoring the need to place the burden on IPG to substantiate its claims.

Memorandum Opinion and Ruling on Validity and Categorization of Claims (Mar. 13, 2015), at 12-13 n. 14.

Consistent with the Judges' repeated findings that Ryan Galaz's purported predecessors were agents and were not the owners of the copyrights on which they were seeking to collect, the Judges have held repeatedly that the copyright owners may terminate the agent at any stage of the proceedings, and that the Judges will honor a claimant's decision to terminate the agent:

As in the prior proceedings, the Judges conclude that if a claimant has provided notice of an immediate termination of its agent, the Judges will honor the claimant's intent, and the termination becomes effective immediately to preclude further action by the agent under sections 111 and 119 of the Act. ...

Accordingly, the Judges shall dismiss those claims pursued by IPG as to which the claimant has either terminated or disavowed IPG's representation.

Memorandum Opinion and Ruling on Validity and Categorization of Claims (Mar. 13, 2015), at 30-31. *See also id.* at 39 ("Based on IPG's failure to produce evidence in discovery in this proceeding relating to claimants' attempted termination(s) of IPG's agency, the Judges GRANT the SDC's request on this basis to disallow the subject claims asserted"). Relatedly, the

Judges have noted, consistent with agency law, that a designated agent's action or inaction in filing and pursuing copyright claims may bind the principals:

[T]o the extent that IPG may have failed to file satellite claims for these 39 principals that it represented in 2008, those alleged claimants may (or may not) have legal recourse against IPG under their respective Representation Agreements with IPG. The Judges express no opinion on the merits of any such claims. However, even such otherwise *bona fide* claimants cannot avoid the preclusive effect in this proceeding of their decision to rely on IPG as their agent, and the subsequent failure of that agent to file their claims.

Id. 34 n. 41.

Therefore, the SDC agree with the Judges that “the burden to establish agency rests with the party asserting its existence.” Order Denying Without Prejudice MGC Motion for Substitution of Parties (Oct. 5, 2020), at 3 (citing *Burbank v. National Cas. Co.*, 43 Cal. App. 2d 773, 781, 111 P.2d 740, 745 (1941)). However, that burden does not fall on the SDC. It is WSG and/or Ryan Galaz that must establish an agency relationship to be entitled to receive any distribution under the Copyright Act. If it is true, as the Judges have found, that “the SDC have not established that the agreements with the MGC claimants are agency agreements” (*id.* at 3), then there is no statutory authority for any distribution to any successor of MGC.

C. WSG and Ryan Galaz Have Failed to Meet Their Burden to Prove That There Has Been a Valid Assignment of Agency Authority.

On the other hand, if the Judges find that Ryan Galaz and WSG have met their burden to establish that the agreements with the MGC claimants are agency agreements, that still falls short of establishing that Ryan Galaz or WSG now have the “legal authority to represent the copyright owners formerly represented by Alfred Galaz.” *Order on Order to Show Cause* (June 12, 2020), at 2. To show that they now have that legal authority, they must show that the agency authority - not merely the contract right - has been validly assigned from Alfred Galaz dba MGC.

As the SDC previously noted, both sides agree that California law applies to the representation agreements from which Ryan Galaz and WSG claim that their authority ultimately originates. California law ordinarily does not permit assignment of an agent's authority without the special authorization of the principal:

Section 2349. AGENT'S DELEGATION OF HIS POWERS. An agent, unless specially forbidden by his principal to do so, can delegate his powers to another person in any of the following cases, *and in no others*:

1. When the act to be done is purely mechanical;
2. When it is such as the agent cannot himself, and the sub-agent can lawfully perform;
3. When it is the usage of the place to delegate such powers; or,
4. When such delegation is specially authorized by the principal.

Cal. Civ. Code § 2349 (emphasis added).

In *Dingley v. McDonald*, 57 P. 574 (Cal. 1899), the leading case cited by the SDC in their opposition to WSG's last motion to substitute, the California Supreme Court rejected the authority of the assignee of an agent for collection to pursue litigation on behalf of the agent's principal:

[The authorized agent for collection] undertook to delegate his authority to plaintiff by assigning the claim to him. ... It is not, and cannot be, contended that [the agent] was specially authorized to delegate his authority; nor can we regard the act to be done by the plaintiff as 'purely mechanical.' ... No usage was shown for agents to assign claims for collection, and we cannot assume that any such usage exists in San Francisco, where the suit was brought. ...

The general power given [to the authorized agent] was based upon the special trust and confidence reposed in his personal ability and integrity, and the rule is that such power, in the absence of authority, express or implied, cannot be redelegated by the agent so as to bind the principal. ...

[A]ssuming that [the agent] had plenary power to collect the demand, we do not think he could transfer it to a third person, and thus invest a stranger to the [principal] with the title and control.

Dingley, 57 P. at 576-77; see also *Navigators Specialty Ins. Co. v. St. Paul Surplus Lines Ins. Co.*, No. 13-cv-03499-SC, 2015 WL 4148319, at *2-3 (N.D. Cal. July 9, 2015) (insurance company's agent was not authorized under Cal. Civ. Code § 2349 to delegate powers to subagent); *Wood River Capital Resources, LLC v. Stewart Title Guaranty Company*, No. A131736, 2013 WL 637903, at *6 (Cal. App., 1st Div. Feb. 21, 2013) ("An agent cannot lawfully delegate its powers to a subagent unless one or more of the conditions in Civil Code section 2349 is satisfied. An unauthorized subagent owes no duties to the principal.").

Dingley is on all fours with this case. Like the plaintiff in *Dingley*, Ryan Galaz and WSG are asserting their right to collect on a claim owned by another based on an assignment of authority by the owner's designated agent. As in *Dingley*, another party to the collection matter has questioned the authority of the purported agent to represent the true owner of the claim. Like the plaintiff in *Dingley*, Ryan Galaz and WSG have not shown that any claimant has consented to the assignment of authority from Alfred Galaz. Therefore, as in *Dingley*, Ryan Galaz and WSG's claim of authority should be denied, for lack evidence that the assignment of authority to act as an agent was valid under California law.

D. WSG Cannot Challenge the Validity of Its Assignment to Alfred Galaz at This Late Date.

WSG has argued that it need not show that it has received a valid assignment either directly or indirectly from Alfred Galaz dba MGC, because WSG was the original holder of the agency authority. But the Judges have already found in this case that WSG's assignment of authority to Alfred Galaz was valid, and that Alfred Galaz therefore became the agent. "The relationship between IPG and MGC is one of assignor and assignee." *Ruling and Order*

Regarding Objections to Cable and Satellite Claims, Nos. 14-CRB-0010-CD (2010-13), 14-CRB-0011-SD (2010-13) (Oct. 23, 2017), 13. Whether the finding was right or wrong is not at issue here; Cal. Civ. Code § 2349 and cases applying it were not addressed, no party appealed the finding, and the time to appeal has expired. It is law of the case. As a matter of law, for the purpose of this case, Alfred Galaz, and not WSG, was the designated agent of the copyright owners, regardless of whether the copyright owners consented to the transfer to MGC.

Ordinarily, a final ruling may be reconsidered only in extraordinary circumstances, such as mistake, newly discovered evidence, or fraud on the court. *See Baltia Air Lines, Inc. v. Transaction Mgmt., Inc.*, 98 F.3d 640, 642 (D.C. Cir. 1996). But even if the Judges were inclined to reconsider their prior ruling that the assignment to Alfred Galaz was valid, it would not necessarily follow that WSG can simply resume the earlier agency authority after purporting to give it away. WSG has not acted as an agent for the claimants (at least not openly), since at least January, 2015. If the Judges were now to determine that MGC was acting improperly as an agent for all of that time, thereby effectively relieving MGC's claimants of the obligations imposed by MGC's actions in this case (including its consent to the final distribution shares in both the Devotional and Program Suppliers categories) then years of proceedings would have to be undone, which would be deeply prejudicial to the other parties in this case. If WSG or any claimant wanted to challenge the validity of the transfer to MGC, their opportunity to do so has long past.

The risk of prejudice to other parties in this matter goes directly to another argument that WSG has raised – the SDC's standing to challenge WSG and Ryan Galaz's authority. As the case *Dingley* makes clear, counterparties to an alleged agent have a very strong interest in knowing whether the agent has the authority to act on behalf of its purported principal, and in

contesting the authority of an agent to pursue a claim that the agent might not be authorized to pursue. This is because it is the principal, and not ordinarily the agent, that will be bound by the agent's conduct. Counterparties need to know if they can rely on the agent's authority, and they should not be held to answer or defend against claims that the agent has no authority to make. It is for this very reason that *Dingley* rejected an agent's authority based on a challenge from an opposing party in the collection matter. Any counterparty to a purported agent has the standing, and even the responsibility, to test the agent's authority to proceed.

It bears noting that Ryan Galaz or WSG would have a straightforward way to assure the Judges and the SDC of their proper authority here: by obtaining written consent from the copyright owners as required by California law. Such documentary evidence would be compelling. However, their decision not to obtain such evidence from copyright owners, despite multiple opportunities over the course of many months, knowing that the issue was raised by the Judges' Show Cause Order, renders the Transfer document deficient on the core question of Ryam Galaz and WSG's legal authority to represent claimants formerly represented by Alfred Galaz.

Conclusion

In short, Ryan Galaz and WSG have failed to meet the Judges' requirement to establish, by "documentary evidence and/or compelling legal argument (with citation to legal authority)," that they have the "legal authority to represent the copyright owners formerly represented by Alfred Galaz." The "Transfer of Interests to Worldwide Subsidy Group LLC," dated October 14, 2020, together with other transfer instruments submitted in this case, if authentic, establishes, at most, a conveyance of contract rights. Under Cal. Civ. Code § 2349, absent evidence of the

copyright owners' consent, these conveyances are ineffective to assign MGC's authority to act as the copyright owners' "designated agent" as required by the Copyright Act.

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Respectfully submitted,

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Certificate of Service

I certify that on October 27, 2020, I caused the foregoing to be served on all parties by filing through the eCRB system.

/s/ Matthew J. MacLean
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Proof of Delivery

I hereby certify that on Tuesday, October 27, 2020, I provided a true and correct copy of the Settling Devotional Claimants' Opposition to Motion for Substitution of Parties by Worldwide Subsidy Group LLC or, Alternatively, Ryan Galaz to the following:

Multigroup Claimants (MGC), represented by Brian D Boydston, served via ESERVICE at brianb@ix.netcom.com

Joint Sports Claimants (JSC), represented by Michael E Kientzle, served via ESERVICE at michael.kientzle@apks.com

National Association of Broadcasters (NAB) aka CTV, represented by John Stewart, served via ESERVICE at jstewart@crowell.com

Public Television Claimants (PTC), represented by Dustin Cho, served via ESERVICE at dcho@cov.com

MPA-Represented Program Suppliers (MPA), represented by Gregory O Olaniran, served via ESERVICE at goo@msk.com

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Signed: /s/ Matthew J MacLean